

REMARKS

Status of Claims

Claims 2, 8, 11, 17-57 have been cancelled without prejudice or disclaimer. Claim 9 has been amended to place it in dependent form upon claim 3. New claims 58-64 have been added. No new matter is added by these amendments.

Restriction Requirement

Applicants hereby elect, with traverse, to prosecute Group II, which includes and is drawn to Claims 3-7, 9-10 and 12-13.

Applicants traverse the restriction requirement which was imposed in the Office Action mailed October 7, 2003 for at least the following reasons.

Applicants reserve the right to prosecute the non-elected subject matter in subsequent divisional applications.

Rejoinder of method claims upon allowance of product claims under U.S. practice

Applicants respectfully request that Claims 14-16 (Group V), new Claim 58 which corresponds to original Claim 28 (Group XII) and new Claim 59 which corresponds to original Claim 29 (Group XIII), drawn to methods of using the elected polynucleotides of Group II should be rejoined per the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)" which sets forth the rules, upon allowance of product claims, for rejoinder of process claims covering the same scope of products.

No Undue Burden

Applicants also respectfully submit that there is minimal additional burden on the Examiner to examine new Claims 60-64 which correspond to original Claims 46-50 (Group XVIII), which are drawn to microarrays with the elected polynucleotides. The search required to identify prior art relevant to this claim should substantially overlap with that required for examination of the elected polynucleotides of Group II.

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It is also submitted that Claim 1, drawn to the polypeptides of the invention, could be examined along with the polynucleotide claims without undue burden on the Examiner. A search for prior art to determine the novelty of the polynucleotides would substantially overlap with a search of the prior art to determine the novelty of the polypeptides encoded by the elected polynucleotides of Group II.

Therefore, Applicants respectfully request that the Examiner withdraw the Restriction Requirement and examine all the claims in a single application.

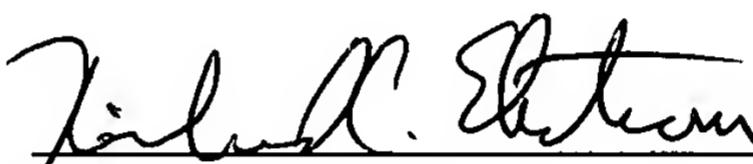
CONCLUSION

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact the undersigned at the number listed below.

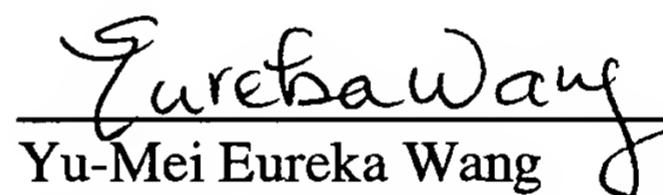
Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. **09-0108**.

Respectfully submitted,
INCYTE CORPORATION

Date: November 7, 2003


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Date: November 7, 2003


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